

DEPARTMENT OF THE ARMY PERMIT

Permittee: City of Newport News, 2400 Washington Avenue, Newport News, VA
23607 (757) 926-8000

Permit No.: 93-0902-12 (Norfolk District)

Issuing Office: North Atlantic Division, Corps of Engineers

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

Perform construction activities and discharge fill material into navigable and non-navigable waters of the United States in conjunction with construction of the King William IV Reservoir, associated water conveyance pipelines and a raw water intake, and streams and wetlands mitigation work required by this permit.

Dredge a maximum of 2,500 cubic yards of material from an approximate 25 foot by 200 foot area of the Mattaponi River to facilitate installation of the raw water intake and associated bedding of riprap over crushed stone and concrete, and install a temporary sheetpile enclosure around the area authorized herein to be dredged and filled. Install two 60-inch diameter raw water intake lines and a 60-inch diameter air piping casing line. Discharge clean fill material into approximately 6.1 acres of freshwater wetlands to facilitate construction of an earthen dam impounding Cohoke Creek. Temporarily impact approximately six acres of wetlands and one acre of streams to facilitate installation of a total of 11.7 miles of water conveyance pipelines. Install a 48-inch diameter pipeline by directional drilling under Cohoke Creek and a 42-inch diameter pipeline by directional drilling under the Pamunkey River and the adjacent Cousiac Marsh. Construct an outfall structure with an associated 33 foot by 150 foot excavated trapezoidal channel/level spreader to consist of riprap atop bedding stone and filter cloth, adjacent to Beaverdam Creek. Perform stream restoration/enhancement work and wetland restoration/creation work as conceptually described in a document titled "King William Reservoir Project Reservoir Mitigation Plan", prepared by Malcolm Pirnie, dated June 2004, and the "Memorandum of Agreement Among the United States Army Corps of Engineers, the Virginia Department of Historic Resources, and the Advisory Council on Historic Preservation for Treatment of Adverse Effects to Historic Properties Affected by the Construction and Development of the King William Reservoir, King William County, Virginia", dated June 21, 2005.

All work shall be performed in accordance with the attached drawings, General Conditions, and Special Conditions (A) through (S) which are hereby made part of this permit.

Project Location: IN: Mattaponi River, Cohoke Creek (a/k/a Cohoke Mill Creek), Pamunkey River, Beaverdam Creek, and various tributaries of the Pamunkey, Mattaponi, Rappahannock and York Rivers

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AT: various locations in Essex, Hanover, Louisa, New Kent and King William Counties, Virginia or other counties in the York or Rappahannock River basins

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on July 1, 2020. If you find that you need more time to complete the authorized activity, submit your request for a time extension to the local district office for consideration at least three months before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must comply with the provisions of the "Memorandum of Agreement Among the United States Army Corps of Engineers, the Virginia Department of Historic Resources, and the Advisory Council on Historic Preservation for Treatment of Adverse Effects to Historic properties Affected by the Construction and Development of the King William Reservoir, King William County, Virginia", dated June 21, 2005 (see Special Condition (R)).
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to the local district office to validate the transfer of this authorization.
5. As a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from the local district office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

(A) Within 20 days of the completion of intake installation work in the Mattaponi River, the permittee shall remove all temporary sheetpiling and restore pre-construction river bottom contours at the work site and dispose of any excess dredged material at an upland location where it will be suitably retained so as to prevent its reentry into any waterbody or wetland.

(B) Within 20 days of the completion of pipeline installation work not involving directional drilling, the permittee shall remove all temporary fills and restore pre-construction stream and wetland substrate contours at each work site and dispose of any excess excavated/dredged material at an upland location where it will be suitably retained so as to prevent its reentry into any waterbody or wetland.

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(C) The permittee shall be responsible for the successful execution of the Wetland, Stream and Riparian Corridor, and Fish and Wildlife Habitat Mitigation Components of the permittee's proffered mitigation proposal conceptually described in a report titled "King William Reservoir Project Reservoir Mitigation Plan", prepared by Malcolm Pirnie, dated June 2004, as specified in the following conditions (D) through (I). The mitigation construction work (grading, planting, etc.) shall be completed to the written satisfaction of the U.S. Army Corps of Engineers prior to the permittee's commencement of raw water withdrawals from the Mattaponi River.

(D) The permittee shall be responsible for the successful restoration and/or creation of 806 acres of freshwater wetland complexes consistent with the above-referenced June 2004 plan. Any deviations from the June 2004 proffered wetland mitigation proposal would have to be approved in advance in writing by the Corps of Engineers in consultation with an Interagency Mitigation Team to include the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency Region III, the U.S. Fish & Wildlife Service Chesapeake Bay Field Office and the Commonwealth of Virginia Department of Environmental Quality. The Final Detailed Mitigation Plan should prioritize utilization of wetland mitigation sites in the York River watershed to the maximum extent practicable.

(E) The permittee shall provide the U.S. Army Corps of Engineers with a final detailed wetlands mitigation plan, for review and written comments by the Interagency Mitigation Team, and approved by the Corps prior to construction. The permittee shall not commence any discharges of dredged or fill material into waters of United States as authorized herein, or disturbance of any wetland mitigation site, until the final detailed wetlands mitigation plan is approved in writing by the U.S. Army Corps of Engineers. The final detailed plan shall comply with Special Condition (F) below include the following items at a minimum:

- a) grading and planting plans for each wetland restoration/creation site, to include an appropriate mix of native species, and target success criteria;
- b) erosion control measure installation and removal plans for each wetland restoration/creation site;
- c) preservation plans for each wetland restoration/creation site, including a proposed legal form of preservation (i.e. conservation easement or other appropriate mechanism), description of preservation area, and means of recordation/acceptance by receiving agency/landowner if applicable;
- d) financial assurances for the successful completion of the minimum required wetland restoration/creation work; and
- e) plans for control of invasive species at the wetland restoration/creation sites.

The U.S. Army Corps of Engineers reserves the right to require that the final detailed plan include additional items as necessary, and shall notify the permittee of such requirement in writing prior to the permittee's submission of the final detailed plan.

(F) The permittee shall monitor each wetland mitigation site over a 20-year period beginning with completion of the first growing season for each wetland creation/restoration site upon which grading has occurred. The permittee shall be required to monitor each site for a maximum of nine (9) times within the 20-year period in accordance with the above-referenced June 2004 plan. Timing of monitoring report preparation and submittal will be determined by the U.S. Army Corps of Engineers in consultation with the Interagency Mitigation Team. The U.S. Army Corps of Engineers shall notify the permittee in writing of the schedule for submission of monitoring reports.

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(G) The permittee shall be responsible for the successful restoration, enhancement and preservation of Corps of Engineers' regulated stream and riparian corridors to offset the approximately 21 linear miles impacted within the reservoir area, consistent with the mitigation credit ratios proffered for stream restoration, enhancement and preservation in the above-referenced June 2004 plan. The U.S. Army Corps of Engineers may authorize the use of stream credits from approved mitigation banks or other stream segments not identified in the above-referenced plan to complete the stream mitigation requirements. Any deviations from the June 2004 proffered stream mitigation proposal must be approved in advance in writing by the Corps of Engineers in consultation with an Interagency Mitigation Team to include the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency Region III, the U.S. Fish & Wildlife Service Chesapeake Bay Field Office and the Commonwealth of Virginia Department of Environmental Quality. The Final Detailed Mitigation Plan should prioritize utilization of stream mitigation sites in the York River watershed to the maximum extent practicable. The permittee will coordinate with the U.S. Army Corps of Engineers to determine appropriate stream mitigation credit for fish passageway mitigation requirements listed in the Virginia Department of Environmental Quality Water Protection Permit/Water Quality Certificate referenced below.

(H) The permittee shall provide the U.S. Army Corps of Engineers with a final detailed streams mitigation plan, for review and written approval by the Corps of Engineers in consultation with an Interagency Mitigation Team to include the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency Region III, the U.S. Fish & Wildlife Service Chesapeake Bay Field Office and the Commonwealth of Virginia Department of Environmental Quality. The permittee shall not commence any discharges of dredged or fill material into waters of United States as authorized herein until the final detailed streams mitigation plan is approved in writing by the U.S. Army Corps of Engineers. The final detailed plan shall comply with Special Condition (I) below and include the following items at a minimum:

- a) detailed design and planting plans for each stream restoration/enhancement site, to include an appropriate mix of native species, and target success criteria;
- b) erosion control measure installation and removal plans for each stream restoration/enhancement site;
- c) preservation plans for each stream restoration/enhancement site, including a proposed legal form of preservation (i.e. conservation easement or other appropriate mechanism), description of preservation area, and means of recordation/acceptance by receiving agency/landowner if applicable;
- d) financial assurances for the successful completion of the minimum required stream restoration/enhancement work; and
- e) plans for control of invasive species at the stream restoration/enhancement sites.

The U.S. Army Corps of Engineers reserves the right to require that the final detailed plan include additional items as necessary, and shall notify the permittee of such requirement in writing prior to the permittee's submission of the final detailed plan.

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(I) The permittee shall monitor each stream restoration/enhancement site for a five-year period, beginning with completion of the first growing season for each stream restoration/enhancement site upon which construction and/or initial planting has occurred in accordance with the above-referenced June 2004 plan. The permittee shall provide monitoring reports at a frequency and timing to be determined by the U.S. Army Corps of Engineers in consultation with the Interagency Mitigation Team. The Corps of Engineers shall notify the permittee in writing of the schedule for submission of monitoring reports.

(J) Within 180 days of the date of issuance of this permit, and in accordance with the small whorled pogonia plant Conservation Recommendation of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion, the permittee shall commence negotiations with the landowner of property identified as New Town Section 8, Parcel ID 38410156, the location of a colony of small whorled pogonia (*Isotria medeoloides*) in James City County, Virginia with the intent of reaching agreement for purchase of a conservation easement area to protect the small whorled pogonia colony. If agreement cannot be reached for a conservation easement on the above referenced property within 180 days of the commencement of negotiations as described above, the permittee shall immediately commence negotiations with the landowner of a private property identified as Parcels 39-1C, 39-208 & 39-201 in Gloucester County, Virginia to preserve an existing small whorled pogonia colony and eight acres of surrounding buffer. The permittee shall submit any proposed easement language for the site to the U.S. Army Corps of Engineers for agencies' coordination and review, and written approval by the Corps before any easement is recorded. The permittee shall pursue and implement an easement on an alternate site location, designated by the U.S. Fish & Wildlife Service and Commonwealth of Virginia Natural Heritage if the primary sites are unavailable.

(K) Within one year of the date of issuance of this permit, the permittee shall submit a draft monitoring plan for the Mattaponi River to the U.S. Army Corps of Engineers for agencies' coordination and review, and written approval by the Corps. Said plan shall include provisions for controlling of initial filling of the King William IV Reservoir as a research opportunity, in accordance with sensitive joint-vetch plant Conservation Recommendation B) of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion.

(L) The permittee shall monitor, for a ten-year period, all extant and appropriate historic sensitive joint-vetch sites on the Mattaponi and Pamunkey Rivers in accordance with sensitive joint-vetch Conservation Recommendation C) of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion. The specific monitoring period will be determined by the U.S. Army Corps of Engineers in consultation with the U.S. Fish & Wildlife Service.

(M) No less than one year prior to the date of commencing intake structure construction activities in the Mattaponi River, and in accordance with sensitive joint-vetch Conservation Recommendation D) of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion, the permittee shall submit to the U.S. Army Corps of Engineers for agencies' coordination and review, and written approval by the Corps before any easement is recorded, a written plan for strict control of invasive species at the Mattaponi River intake site at Scotland Landing, Virginia. The permittee shall immediately notify the U.S. Army Corps of Engineers if the execution of said plan would result in an additional discharge of dredged or fill material into jurisdictional waters of the United States.

(N) No less than one year prior to the date of commencing intake structure construction activities in the Mattaponi River, and in accordance with sensitive

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joint-vetch Conservation Recommendation E) of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion, the permittee shall submit to the U.S. Army Corps of Engineers for agencies' coordination and review, and written approval by the Corps, a plan for installation of an appropriate series of buoys and/or markers in the Mattaponi River in the vicinity of the intake site. The plan shall prescribe means for protection of the intake structure from potential damage by passing vessels, and for minimization of boat wake impacts to sensitive joint-vetch plant habitat at Garnetts Creek Marsh. The permittee shall also submit all necessary permit applications to secure any necessary federal (Non-U.S. Army Corps of Engineers), state and/or local approvals to perform such work.

(O) Within 180 days of the date of issuance of this permit, and in accordance with the sensitive joint-vetch plant Conservation Recommendation F) of the U.S. Fish & Wildlife Service's September 18, 1998 Biological Opinion, the permittee shall commence negotiations with the landowner(s) of properties containing the Garnetts Creek Marsh and Gum Marsh, plus upland buffer areas, with the intent of reaching agreement for land acquisition or purchase of a conservation easement area to protect the sensitive joint-vetch populations. The permittee shall submit a suitable protection plan, including configuration of upland buffers, plus any proposed easement language for the site to the U.S. Army Corps of Engineers for agencies' coordination and review, and written approval by the Corps before any easement is recorded. The permittee shall consult with the U.S. Army Corps of Engineers in the event of negotiation failure.

(P) Should bio-fouling mollusks, such as the zebra mussel, become present in the York River, the permittee shall submit to the U.S. Army Corps of Engineers and the U.S. Fish & Wildlife Service, Chesapeake Bay Field Office, for approval an Operational Plan for installation and operation of a chemical feed system that can apply chemicals within the intake pipe on the river side of raw water pump discharge check valves. The Operational Plan shall detail the proposed chemicals or other measures to be utilized to protect its intake structures from such species, and shall be accompanied by a technical assessment of the potential impact on river habitat and fisheries resources, including a specific assessment for listed species, resulting from activation of the proposed measures. The permittee shall not install or operate this chemical feed system until the U.S. Army Corps of Engineers has notified them in writing that the requirements of Section 7 of the Endangered Species Act of 1973, as amended (Title 16, U.S. Code § 1531 et. seq.) have been satisfied and that permission is granted to install and activate the chemical feed system.

(Q) The special conditions contained in the Commonwealth of Virginia issued Water Quality Protection Permit/Section 401 of the Clean Water Act Water Quality Certificate numbered 93-0902, dated December 22, 1997, last modified January 14, 2000, and with an expiration date of December 22, 2007, are incorporated herein as conditions of this Department of the Army permit in accordance with Section 401(d) of the Clean Water Act. If the Commonwealth of Virginia changes Special Conditions A-9, A-10, B-4 and B-5, by modification or issuance of a new permit/certificate, they will not become conditions of this Department of the Army permit until the Corps formally modifies it. The existing Special Conditions shall remain in effect until such Department of the Army permit modification occurs, as appropriate.

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R) The permittee shall comply with all stipulations and requirements of the "Memorandum of Agreement Among the United States Army Corps of Engineers, the Virginia Department of Historic Resources, and the Advisory Council on Historic Preservation for Treatment of Adverse Effects to Historic Properties Affected by the Construction and Development of the King William Reservoir, King William County, Virginia", a copy of which is attached to this permit. To facilitate such compliance, the permittee shall regularly consult with a Cultural Resources Programmatic Agreement Implementation Team to include the U.S. Army Corps of Engineers, the Advisory Council on Historic Preservation, and the Commonwealth of Virginia Department of Historic Resources with optional participation by representatives of the Mattaponi, Upper Mattaponi, and Pamunkey Native American Tribes.

(S) In addition to the financial requirements set forth in the Memorandum of Agreement referenced in Special Condition (R) above, and in accordance with Title 33 of the Code of Federal Regulations, § 326.4 (c) plus the authority in Section 9701 of Public Law 97-258 (Title 31, U.S. Code § 9701), the permittee shall hire a third-party contractor (or contractors) approved by and answerable to the U.S. Army Corps of Engineers. The permittee shall pay for the costs of field work of said contractor(s) in support of permit compliance and enforcement efforts for this permit to include, at a minimum, field-checking and reviewing the final detailed wetlands and streams mitigation plan and cultural resource treatment plans, and inspecting the project site, mitigation sites and cultural resource sites. Said contractor(s) shall advise the Corps as to the permittee's compliance or non-compliance with the terms and conditions of the permit, including those pertaining to wetlands and streams mitigation and compliance with the cultural resources Programmatic Agreement.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code 403).

(X) Section 404 of the Clean Water Act (33 U.S. Code 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization:

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

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c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which the division office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by the district office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

City of Newport News

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DIVISION ENGINEER)

William T. Grisoli
Brigadier General, U.S. Army
Division Engineer

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below. A copy of the permit signed by the transferee should be sent to this office.

(TRANSFeree)

(DATE)